

**ARIZONA SUPREME COURT
CRIMINAL RULES VIDEO-CONFERENCE ADVISORY COMMITTEE (CRVAC)
MEETING MINUTES
May 29, 2009**

Members Present:

Hon. Antonio Riojas, Chair
Paula Collins, as proxy for Hon. Gary Donahoe
Hon. Samuel Goodman
Amelia Cramer
Sally Wells
Robert Hirsh
Capt. Charles Johnson
Bob James
Jeremy Mussman
Deborah Schaefer

Members Present by Telephone:

Hon. K.C. Stanford
Kent Batty

Members not Present:

Capt. Rodney Mayhew
Terry Stewart

Guests:

Theresa Barrett

Staff: Patience Huntwork, Mark Meltzer, Tama Reily

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1. Call to order. The meeting was called to order at 1:05 p.m. The Chair introduced Paula Collins as the proxy for Judge Donahoe.

Draft minutes of the May 1, 2009, meeting were presented for approval. Mr. Mussman proposed two changes to the draft minutes, which were agreed to by the members, and with these revisions, the draft minutes were unanimously approved.

2. Discussion of the presentations to the standing committees. This meeting then proceeded to a discussion regarding the presentations made of the CRVAC majority and minority proposals for amending Rule 1.6 to the Committee on Superior Court, on May 15, 2009, and to the Committee on Limited Jurisdiction Courts, on May 20, 2009. Votes taken at these two meetings resulted in a lack of support by these Arizona Judicial Council (AJC) standing committees for the CRVAC majority proposal to amend Rule 1.6.

The Chair and Mr. Mussman made the presentations to the Committee on Superior Court (COSC). The Chair noted that COSC was concerned about the lack of operational guidelines for the proposed majority version. Mr. Mussman added that COSC objected to the scope of video proceedings that were permitted under the proposed “majority” rule; to a lack of definitions; and to the court conducting a video proceeding notwithstanding a defendant’s lack of consent.

The Chair, Mr. Mussman, and Judge Goodman, who along with Judge Donahoe made presentations to the Committee on Limited Jurisdiction Courts (LJC), then reported on their presentations to the LJC. The LJC was concerned about the differences between the majority version of Rule 1.6 and the rule proposal in R-06-0016, and the lack of public comment on the new proposal. The LJC also had concerns about the differences in treatment between felonies

and misdemeanors under the proposed rule. The LJC considered these differences to be a “glaring problem”.

The Chair advised the members that following the comments from these standing committees, he directed staff to prepare a new proposal for amendments to Rule 1.6. The new proposal was then circulated among the members and discussed. Staff noted that in order for any CRVAC recommendations to be considered by the AJC at its June 17, 2009, meeting, staff would have to receive CRVAC’s written recommendations by June 3, 2009.

3. Discussion on the new proposed version of Rule 1.6. The following comments were made by the members regarding the new proposed version of amendments to Rule 1.6:

- The public defender members had no objection to initial appearances under Rule 4.2 being done by video-conference, except for the bail portion of the proceeding. It was the defenders’ belief that a proceeding which determines conditions of release should be conducted with the accused personally present in the courtroom, and that it should not be done by video-conference.
- Paragraph titles in the new proposed version should be modified.

At this point, the new proposed version in Word format was projected on to a screen. While the proposed rule was in full view of the members, revisions were made to the title of paragraphs (c), (d), and (e), and to the body of these paragraphs. The titles of these three paragraphs were changed to: “(c) Proceedings Excluded Absent Extraordinary Circumstances and Parties’ Consent”, “(d) Proceedings Allowed in Sole Discretion of the Court”, and “(e) Proceedings Allowed upon Stipulation”. During the course of the meeting, updated drafts of the rule and code section under discussion were continually emailed to the members who were present by telephone.

MOTION: A motion was made to adopt the newly proposed version of Rule 1.6, as revised by the members.

The motion was seconded and carried: 9-2-0. CRVAC 09-022. [The Chair did not vote.]

The public defender members of the Committee requested that the proposed rule delete initial appearances from the proceedings identified in paragraph (d).

MOTION: That initial appearances be deleted from the enumerated proceedings allowed in the sole discretion of the court under paragraph (d).

The motion was seconded but failed to carry: 2-9-0. CRVAC 09-023. [The Chair did not vote.]

Following the motion, Ms. Wells left the meeting, and Ms. Cramer arrived at the meeting.

4. Discussion on the proposed section of the Arizona Code of Judicial Administration.

Next, the members reviewed the proposed section of the ACJA concerning interactive audiovisual proceedings. The proposed section contained technical requirements, operational requirements, and recommended practices for video-conferencing.

A discussion ensued on whether this Committee, or members of the criminal defense bar, will have an opportunity to review the standards which the Commission on Technology (COT) is required to promulgate under the provisions of the proposed code section. It was noted that the Technical Advisory Committee (TAC) will probably be delegated responsibility by COT for creating the video standards; and that under existing ACJA section 1-109, advisory committees may be created to assist TAC. It was further noted that the Vice Chief Justice of the Supreme Court chairs COT; and that under section 1-109, COT meetings are noticed and open to the public.

A recommendation was made that the minimum standards which are adopted by COT should appear in the code section before rather than after the local court policies which are required for individual jurisdictions.

MOTION: That the paragraphs in the sub-section of the proposed ACJA section dealing with technical requirements be re-ordered so that COT's minimum standards are first, followed by the local court policies.

The motion was seconded and carried unanimously. CRVAC 09-024.

5. Discussion on the draft Committee report to the AJC. The members proceeded to discuss the draft Committee report to the AJC. A member requested that case law from other jurisdictions which supported the use of video-conferencing in criminal cases be included in the body of the report. Staff then presented an alternative version of the draft Committee report which contained a new Part II, section 6, entitled "Case Law from Other Jurisdictions". This section recited portions of opinions from Illinois, Kentucky, New Hampshire, Pennsylvania, and Florida which had been discussed at previous meetings of the Committee. With approval of the members present, this new section 6 was added to the draft report.

An issue was also raised about whether it was appropriate to include the Arizona decision of State v Schackart in the report, inasmuch as this did not deal directly with video-conferencing. Staff explained that Arizona lacked case law on video-conferencing, but that Schackart was predicate case law on the issue of the right of a defendant to be present in the courtroom, and accordingly, the reference to Schackart remained in the report.

ACTION: The members requested that staff email them copies of the versions of the proposed rule and code section agreed to by the members this afternoon. Staff confirmed that this would be done following the conclusion of today's meeting. Staff also advised that he would circulate a revised version of the draft Committee report over the upcoming weekend so that it could be reviewed in its final form prior to submission to AJC staff on June 3, 2009.

6. Call to the Public; Adjourn. There was no response to the call to the public. The meeting was adjourned at 3:55 p.m. No further meetings are scheduled at this time. However, a future meeting may be scheduled if appropriate and according to the agendas and actions of the Arizona Judicial Council and the Arizona Supreme Court.